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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-sixth (extraordinary) session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 39th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 17 August 2001, at 3 p.m.

Chairperson: Ms. BONOAN-DANDAN

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* The summary record of the second part (closed) of the meeting appears as document E/C.12/2001/SR.39/Add.1.

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The meeting was called to order at 3.05 p.m.

FOLLOW-UP TO THE CONSIDERATION OF REPORTS UNDER ARTICLES 16 AND 17 OF THE COVENANT (agenda item 4) (continued)

Additional information submitted by Israel in connection with its initial report (continued) (E/1989/5/Add.14; E/C.12/1/Add.27)

1. At the invitation of the Chairperson, Mr. Israeli (Israel) took a place in the meeting room.

2. Mr. ISRAELI (Israel) said that his Government had made considerable efforts to provide the additional information requested by the Committee and to submit its second periodic report. However, the Committee, which seemed to have adopted a pattern of taking a negative approach towards Israel, had failed to apply the principles of transparency, objectivity, due process and equal treatment and had systematically adopted double standards and questionable procedures in order to keep Israel permanently on its agenda, in violation of the guidelines for the functioning of treaty monitoring bodies.

3. In its letter of 1 December 2000, the Committee had introduced new issues that did not fall within the scope of Israel's initial report or of the request for additional information. Those issues constituted a one-sided political statement, referring to controversial "reports" as established fact, and demonstrating the Committee's prejudice. The Committee had also selected one of those issues for consideration in May 2001, despite his Government's commitment to provide the information requested in its second periodic report. Furthermore, the Committee had heard oral reports from NGOs concerning Israel at a time when no report had been scheduled for consideration.

4. The application to Israel of the Committee's 1999 "Procedures in relation to follow-up action", even prior to their submission to the Economic and Social Council for consideration, conflicted with the relationship of those two bodies as established in resolution 1985/17. A recent report by Professor Bayefsky entitled "The United Nations Human Rights Treaty System: Universality at the Crossroads" had found that the Committee had used that procedure simply as a means of placing Israel on its agenda whenever it thought fit.

5. The Committee's exceptional focus on Israel was all the more unjustified in view of the massive backlog of reports by other countries awaiting consideration, not to mention the substantial number of non-reporting States.

6. At its meeting on 23 April 2001, the Committee had decided to defer to its August session consideration of the additional information submitted by Israel on 20 April, on the ground that insufficient time had been available for translation. However, that had not prevented it, at its April meeting, from hearing oral submissions by NGOs concerning Israel's compliance with the Covenant and reaching substantive conclusions on the very subject on which additional information had been requested, without taking that information into account. One unprecedented conclusion called for the substantive involvement in July 2001 of the Economic and Social Council in the matter, even though dialogue with his delegation had been scheduled for 17 August 2001.

7. The Committee had singled out one State for criticism without reviewing its reports or the information submitted, without engaging in a constructive dialogue with it and without abiding by its own rules of procedure, thus discrediting itself, casting doubts on its members' objectivity and independence, and calling into question its integrity within the treaty monitoring system.

8. He reiterated his Government's position that consideration of human rights issues in the West Bank and the Gaza Strip was not within the Committee's competence, since those territories fell within the ambit of armed conflict and international humanitarian law. Moreover, the transfer to the Palestinian Authority of powers in a wide range of fields, under the Israeli-Palestinian agreements, absolved Israel of all responsibility for reporting on human rights in those areas.

9. Given the differences of opinion between his Government and the Committee, it was imperative for all controversial aspects to be discussed in depth during consideration of Israel's second periodic report, discussion of which he hoped would be apolitical, productive and forward-looking. Meanwhile, Israel would not participate further in the current session of the Committee.

10. Mr. Israeli (Israel) withdrew.

11. The CHAIRPERSON said that, despite the withdrawal of the Israeli delegation, she would like to address certain points made in its statement. In its concluding observations on Israel's initial report, the Committee had requested the State party to complete that report by providing additional information on the realization of economic, social and cultural rights in the occupied territories, thus ensuring full compliance with its reporting procedures and enabling the Committee to complete its concluding observations. Accordingly, since the additional information pertained exclusively to the initial report, the State party's request for it to be considered together with its second periodic report had been structurally unfeasible and had had to be rejected. Israel's accusation that the Committee's decision to reschedule consideration of the additional information, despite receiving it in the spring of 2001, was a malicious ploy against it and was decidedly false. That had been done to enable Committee members to have it in all language versions so that they could come to the discussion with full knowledge of the situation in the occupied Arab territories in order to be fair to the State party.

12. She contested the delegation's claim that the Committee had a massive backlog of unconsidered reports. With its two extraordinary sessions in August 2000 and 2001, there was no backlog, let alone a massive one. The State party's accusation was intended to make the Committee appear to be discriminating against it. She had not seen the report referred to by the Israeli delegation, so could not comment.

13. Despite the delegation's assertions, the Committee had never presumed to dictate what action the Economic and Social Council should take, but had merely reported facts in the public domain. In its May and December 2000 letters to the Council the Committee had highlighted well-known facts and had added no new issues. The Israeli delegation's claim of bias and double standards on the part of the Committee was in itself accusatory, discriminatory, unfounded and totally unjust.

14. The Committee, in its concluding observations of 1998, had requested updated statistical data, additional information on the provision of basic services to unrecognized villages, and updated information concerning the Jahalin Bedouins then camped in Abu Dis, who were awaiting a court decision on their resettlement.

15. In the additional information submitted, Israel had disagreed with the Committee that it had effective jurisdiction over the West Bank and Gaza Strip as well as East Jerusalem. Since the information sought had not been forthcoming, because of Israel's premise that it was not accountable for economic, social and cultural rights in the occupied territories, the Committee should deal with the additional information as though Israel were a non-reporting State and would need to decide on the nomenclature for its written comments.

16. Mr. MALINVERNI said that there was some contradiction between paragraph 2 of the additional information (E/1989/5/Add.14), which denied that the Covenant applied to areas not subject to Israel's sovereign territory and jurisdiction, and paragraph 5, which stated that the State party was ready to provide the Committee with information regarding those powers and responsibilities it continued to exercise in the West Bank and the Gaza Strip, in accordance with the agreements reached with the Palestinians, a tacit acknowledgement that the Israeli Government continued to exercise certain prerogatives and powers of sovereignty in those territories.

17. In paragraph 2 of the additional information, the State party had made a clear distinction between international human rights law and international humanitarian law, claiming that only the latter applied in the occupied territories. He rebutted that claim, since the fact that the Geneva and Hague Conventions concerning humanitarian law applied in situations of armed conflict did not exonerate belligerent States from their obligation to respect human rights.

18. A distinction must be made between types of human rights violation when attributing responsibility to the Palestinian Authority or to Israel. For instance, treatment of prisoners and failure to conduct trials in accordance with due process fell within the Palestinians' responsibility. However, regarding economic, social and cultural rights, the Israeli authorities were patently responsible for such acts as premeditated destruction of housing and harvests and the cutting off of the water supply.

19. Ms. BARAHONA-RIERA, endorsing Mr. Malinverni's remarks, said the existence of armed conflict did not absolve States from protecting human rights in their recognized or de facto territories, even though such a situation might well make enjoyment of those rights more problematic. It was on that basis that the Committee should analyse the implementation of economic, social and cultural rights in the occupied territories.

20. Mr. RIEDEL, pointing out that an identical debate had taken place during consideration of Israel's initial report in November 1998, referred the Committee to document E/C.12/1998/SR.31 (paras. 27, 40 and 41). On that occasion, Mr. Sadi and he had raised the very points made by the two previous speakers, stressing that the acid test of applicability was Israel's functional control in the occupied Arab territories. Although Israel had

rejected that interpretation, all other treaty bodies and United Nations organs had accepted it, so that, under its obligations as a State party, Israel was fully responsible for the realization of economic, social and cultural rights in the territories.

21. As to the Committee's next course of action, since Israel had still not reported on the occupied territories, the Committee should formulate its concluding observations in the absence of a delegation. To be blunt, the Israeli delegation had been reprehensible in accusing the Committee of allowing Israeli NGOs to express their views while denying the State party that opportunity. The State party had always been present as an observer during NGO hearings, but had repeatedly refused to take the floor, although invited to do so. The Committee must now assess the information provided by the State party, the NGOs and the specialized agencies, treat Israel as a non-reporting State and formulate its concluding observations on the additional information to the State party's initial report, which was not to be confused with its second periodic report.

22. Mr. SADI said he was amazed at the delegation's attempt to differentiate between humanitarian and human rights law, a dichotomy that was no longer valid, as was patently clear in the 1998 Statute of the International Criminal Court, which stated unequivocally that human rights violations were part and parcel of humanitarian law.

23. The Committee had sought information from Israel in order to determine the extent of its responsibility. It was therefore surprising that the State party should deny the Committee the opportunity to do so and forgo its own right to be heard. Although, in view of the situation in the occupied territories, Israel was aware of the need for dialogue, it had firmly refused to be engaged, preferring to invoke its principle of non-responsibility. Postponement of discussion of the situation to consideration of Israel's second periodic report was pointless, because the State party would adopt the same stance. He agreed with Mr. Riedel regarding the Committee's next course of action.

24. Mr. GRISSA said that he was surprised at the Israeli representative's extreme and unfair reaction. The Committee had requested additional information from other countries in the past, but had never been accused of singling them out.

25. The situation was very serious. People were unable to go to work and sometimes could not leave their villages or even their homes. Children could not attend school. He proposed that the Committee should produce more complete concluding observations, to be appended to the previous ones.

26. Mr. AHMED said that at issue was a challenge by a recalcitrant State to the legality and authority of the United Nations. He pointed out that Economic and Social Council resolution 1999/53 had reaffirmed the inalienable right of the Palestinian people to all its natural and economic resources, called upon Israel, the occupying power, not to exploit, endanger or cause loss or depletion of those resources and also reaffirmed that Israeli settlements in the occupied territories, including Jerusalem, were illegal and an obstacle to social and economic development.

27. The exploitation of Palestinian natural resources by the Israeli occupying Power amounted to discrimination against the Palestinian people. To cite one example, the Israeli settlements in the occupied Palestinian territories received five times as much water as the Palestinian villages, in blatant violation of the Palestinians' economic rights.

28. Mr. MARTYNOV said that in his view, the totally unfounded allegation that the Committee had departed from established procedural practice was, at best, the result of a poor understanding of the Committee's practice, or, at worst, a deliberate distortion of the facts.

29. He fully agreed with other members about Israel's responsibilities in the occupied Palestinian territories. The Palestinian authorities had become a mere phantom, whereas Israeli tanks, roadblocks and blockades were hard reality.

30. The attack on the Committee's integrity, independence and professionalism was unprecedented. The State party's uncooperative attitude, which had begun with its unwillingness to provide information in the initial report or make additional information available on time so that the Committee could consider it at its session in May 2001, had continued with its last-minute refusal not to attend the current session, and it had just culminated with the Israeli representative's walking out of the meeting. Israel thus intended to avoid all dialogue with the Committee, which had no choice but to continue consideration of its concluding observations as part of the non-reporting procedure. As he saw it, there had been massive and direct denial of the economic, social and cultural rights of the Palestinian population in the occupied territories.

31. Mr. RIEDEL said that he did not agree entirely with the last speaker: the State party had consistently said that it wished to have a dialogue, but not on the occupied territories. Thus, Israel had not provided any information on them. That was unacceptable.

32. Mr. HUNT said that grave human rights violations, including of economic, social and cultural rights, tended to fuel social unrest, civil strife and violence. Social and economic justice provided the foundations for peace. There could be no lasting peace without greater respect for the Covenant in the occupied Palestinian territories. The problems in the territories were not narrowly political, but were also related to social injustice. The Covenant had a role to play in building an equitable social and economic society.

33. Mr. WIMER ZAMBRANO said that the Israeli representative was aware that the State party was not in compliance but had rejected every point that the Committee had tried to make. That was a political way of dealing with legal issues. The Committee must make it clear that much of the information provided was erroneous and slanderous.

34. Mr. MARCHAN ROMERO said that the Israeli delegation's behaviour was a challenge to the Committee and the integrity of the human rights monitoring system. Israel deprived the Committee's independent experts of the right to express their views. It failed to understand that the Committee was not a tribunal that handed down sentences, but a body that monitored the implementation of commitments, including in the occupied territories.

35. The CHAIRPERSON, speaking as a member of the Committee, recalled that following the completion of the concluding observations, she, as Country Rapporteur for Israel, had received a note verbale accusing the Committee of bias and of having a political agenda. In her view, the Israeli representative wanted the Committee to waste time responding to his statement rather than discussing the State party's failure to provide additional information on recent events in the occupied Palestinian territories. The Committee must not allow itself to be distracted by the State party's accusations or its avowed unwillingness to engage in a dialogue or comply with its reporting obligations in respect of the occupied Palestinian territories. She suggested that the Committee should focus its attention on various issues arising from consideration of the initial report, such as the Law of Return, as well as on recent NGO submissions.

36. In its concluding observations (E/C.12/1/Add.27), the Committee had requested additional information on the occupied territories and statistical data on the progressive realization of economic, social and cultural rights in East Jerusalem (para. 32). The additional information received had not addressed the Committee's concern at the effect of the directive of the Ministry of the Interior, under which Palestinians might lose their right to live in the city if they could not prove that East Jerusalem had been their "centre of life" for the past seven years, and had not covered the question of permanent residency in East Jerusalem, or the separation of Arab families and the denial of their right to social services and health care, including maternity care for Arab women, which were privileges linked to residency status in Jerusalem (para. 20).

37. Mr. GRISSA thought that, to save time, one member of the Committee should prepare new draft concluding observations, which could then be adopted in a closed meeting. The material was already available.

38. The CHAIRPERSON agreed, but thought that there had to be a preliminary discussion on which to base the concluding observations.

39. Mr. MALINVERNI stressed the impact on all the rights guaranteed under the Covenant of restrictions on the freedom of movement of Palestinians. In particular such restrictions affected the right to health services, since ambulances could not move freely; the right to education, since children could not attend school; and the right to work, since workers could no longer go to Israel, where they were employed. In view of the destruction of harvests and buildings and of the water crisis in the West Bank, the Committee should conclude that there had been a violation of article 1, paragraph 2.

40. Ms. BARAHONA-RIERA said that the Committee should also turn its attention to the grave housing crisis affecting Arabs in East Jerusalem. Dwellings built by Palestinians without building permits, which were often impossible to obtain, had been destroyed. She also referred to the psychological impact on families of the present status of the occupied territories. Unemployment had skyrocketed. Many jobs in the building industry had been lost. That had affected the standard of living of many families. Those developments amounted to violations of the rights set out in the Covenant.

41. Mr. SADI thought that, before focusing on specific areas, the Committee should consider implementation of article 1, and in particular the right of self-determination, the right of

peoples to dispose freely of their natural wealth and resources and the obligation of State parties responsible for non-self-governing territories to promote the realization of the right of self-determination.

42. The CHAIRPERSON noted that the concluding observations on the report of Israel had highlighted specific violations and concerns and that the Committee had reiterated those concerns in its letters to the State party asking for further information. Those violations occurred in the occupied Palestinian territories, which Israel had excluded from its report. She therefore suggested that the Committee should consider some of the structural factors that gave rise to the violations.

The public part of the meeting rose at 4.25 p.m.